

106TH CONGRESS  
2D SESSION

# H. R. 5175

To provide relief to small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2000

Mr. OXLEY (for himself, Mr. BOEHLERT, Mr. HOLDEN, Mr. CRAMER, Mr. BLILEY, Mr. STENHOLM, Mr. SHIMKUS, Mr. LIPINSKI, Mr. GREENWOOD, Mr. CONDIT, Mr. SHERWOOD, Mr. BARCIA, and Mr. UPTON) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide relief to small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Small Business Liabil-  
5       ity Relief Act”.

1 **SEC. 2. SMALL BUSINESS LIABILITY RELIEF.**

2 (a) LIABILITY EXEMPTIONS.—Section 107 of the  
3 Comprehensive Environmental Response, Compensation,  
4 and Liability Act of 1980 (42 U.S.C. 9607) is amended  
5 by adding at the end the following:

6 “(o) SMALL BUSINESS DE MICROMIS EXEMPTION.—

7 “(1) IN GENERAL.—Except as provided in para-  
8 graphs (2) and (3), a business entity that, during its  
9 3 taxable years preceding the date on which the  
10 business entity first receives or received written noti-  
11 fication from the President of its potential liability  
12 under this section, (A) employed on average not  
13 more than 100 full-time individuals (notwithstanding  
14 fluctuations resulting from seasonal employment) or  
15 the equivalent thereof, and (B) had, on average, an-  
16 nual revenues of \$3,000,000 or less, as reported to  
17 the Internal Revenue Service, shall be liable under  
18 paragraph (3) or (4) of subsection (a) to the United  
19 States or any other person (including liability for  
20 contribution) for any response costs incurred with  
21 respect to a facility only if the total of material con-  
22 taining a hazardous substance that the business en-  
23 tity arranged for disposal or treatment of, arranged  
24 with a transporter for transport for disposal or  
25 treatment of, or accepted for transport for disposal  
26 or treatment, at the facility, was greater than 110

1 gallons of liquid material or greater than 200  
2 pounds of solid material.

3 “(2) EXCEPTION.—Paragraph (1) shall not  
4 apply if the President determines that—

5 “(A) the material containing a hazardous  
6 substance referred to in paragraph (1) contrib-  
7 uted or could contribute significantly, individ-  
8 ually or in the aggregate, to the cost of the re-  
9 sponse action with respect to the facility; or

10 “(B) the business entity has failed to com-  
11 ply with an administrative subpoena or any rea-  
12 sonable request for information issued by the  
13 President under this Act, or has impeded or is  
14 impeding the performance of a response action  
15 with respect to the facility.

16 “(3) TIME PERIOD COVERED.—Paragraph (1)  
17 shall only apply to material that a business entity  
18 arranged for disposal or treatment of, arranged with  
19 a transporter for transport for disposal or treatment  
20 of, or accepted for transport for disposal or treat-  
21 ment, at a facility before the date of the enactment  
22 of the Small Business Liability Relief Act.

23 “(p) MUNICIPAL SOLID WASTE EXEMPTION.—

24 “(1) IN GENERAL.—Except as provided in para-  
25 graph (2), a person may be liable for response costs

1 under paragraph (3) or (4) of subsection (a) for mu-  
2 nicipal solid waste at a facility only if the person is  
3 not—

4 “(A) an owner, operator, or lessee of resi-  
5 dential property from which all of the person’s  
6 municipal solid waste was generated with re-  
7 spect to the facility;

8 “(B) a business entity that—

9 “(i) during its 3 taxable years pre-  
10 ceding the date on which the business enti-  
11 ty first receives or received written notifi-  
12 cation from the President of its potential  
13 liability under this section, employed on av-  
14 erage not more than 100 full-time individ-  
15 uals (notwithstanding significant fluctua-  
16 tions resulting from seasonal employment),  
17 or the equivalent thereof; and

18 “(ii) generated all of its municipal  
19 solid waste with respect to the facility; or

20 “(C) an organization described in section  
21 501(c)(3) of the Internal Revenue Code of 1986  
22 and exempt from tax under section 501(a) of  
23 such Code that, during its taxable year pre-  
24 ceding the date on which the organization first  
25 receives or received written notification from

1 the President of its potential liability under this  
2 section, employed not more than 100 paid indi-  
3 viduals at the location from which was gen-  
4 erated all of the municipal solid waste attrib-  
5 utable to the organization with respect to the  
6 facility.

7 “(2) EXCEPTION.—Notwithstanding paragraph  
8 (1), a person may be liable under this section if the  
9 President determines that the person has failed to  
10 substantially comply with an administrative sub-  
11 poena or any reasonable request for information  
12 issued by the President under this Act, or has im-  
13 peded or is impeding the performance of a response  
14 action with respect to the facility.

15 “(3) DEFINITION OF MUNICIPAL SOLID  
16 WASTE.—

17 “(A) IN GENERAL.—For purposes of this  
18 subsection, the term ‘municipal solid waste’  
19 means waste material—

20 “(i) generated by a household (includ-  
21 ing a single or multifamily residence, hotel,  
22 or motel); and

23 “(ii) generated by a commercial, insti-  
24 tutional, or industrial source, to the extent  
25 that the waste material—

1 “(I) is essentially the same as  
2 waste normally generated by a house-  
3 hold; or

4 “(II) is collected and disposed of  
5 with other municipal solid waste as  
6 part of normal municipal solid waste  
7 collection services and, with respect to  
8 each source from which the waste ma-  
9 terial is collected, qualifies for a small  
10 business de micromis exemption under  
11 subsection (o).

12 “(B) EXAMPLES.—Examples of municipal  
13 solid waste under subparagraph (A) include  
14 food and yard waste, paper, clothing, appli-  
15 ances, consumer product packaging, disposable  
16 diapers, office supplies, cosmetics, glass and  
17 metal food containers, elementary or secondary  
18 school science laboratory waste, and household  
19 hazardous waste.

20 “(C) EXCLUSIONS.—The term ‘municipal  
21 solid waste’ does not include—

22 “(i) combustion ash generated by re-  
23 source recovery facilities or municipal in-  
24 cinerators; or

1 “(ii) waste material from manufac-  
 2 turing or processing operations (including  
 3 pollution control operations) that is not es-  
 4 sentially the same as waste normally gen-  
 5 erated by households.

6 “(4) COSTS AND FEES.—A person that com-  
 7 mences a contribution action under section 113 shall  
 8 be liable to the defendant for all reasonable costs of  
 9 defending the action, including all reasonable attor-  
 10 ney’s fees and expert witness fees, if the defendant  
 11 is not liable for contribution based on an exemption  
 12 under this subsection or subsection (o).”.

13 (b) EXPEDITED SETTLEMENT FOR DE MINIMIS CON-  
 14 TRIBUTIONS AND LIMITED ABILITY TO PAY.—

15 (1) PARTIES ELIGIBLE.—Section 122(g) of  
 16 such Act (42 U.S.C. 9622(g)) is amended—

17 (A) in paragraph (1) by redesignating sub-  
 18 paragraph (B) as subparagraph (E);

19 (B) by striking “(g)” and all that follows  
 20 through the period at the end of paragraph  
 21 (1)(A) and inserting the following:

22 “(g) EXPEDITED FINAL SETTLEMENT.—

23 “(1) PARTIES ELIGIBLE.—

24 “(A) IN GENERAL.—The President shall,  
 25 as expeditiously as practicable, notify of eligi-

1 bility for a settlement, and offer to reach a final  
2 administrative or judicial settlement with, each  
3 potentially responsible party that, in the judg-  
4 ment of the President, meets 1 or more of the  
5 conditions set forth in subparagraphs (B), (C),  
6 and (E).

7 “(B) DE MINIMIS CONTRIBUTION.—The  
8 condition for settlement under this subpara-  
9 graph is that the liability of the potentially re-  
10 sponsible party is for response costs based on  
11 paragraph (3) or (4) of subsection (a) of section  
12 107 and the potentially responsible party’s con-  
13 tribution of hazardous substances at a facility is  
14 de minimis. For the purposes of this subpara-  
15 graph, a potentially responsible party’s con-  
16 tribution shall be considered to be de minimis  
17 only if the President determines that each of  
18 the following criteria are met:

19 “(i) The quantity of material con-  
20 taining a hazardous substance contributed  
21 by the potentially responsible party to the  
22 facility is minimal relative to the total  
23 quantity of material containing hazardous  
24 substances at the facility. The quantity of  
25 a potentially responsible party’s contribu-



tion shall be presumed to be minimal if the quantity is 1 percent or less of the total quantity of material containing hazardous substances at the facility, unless the Administrator establishes a different threshold based on site-specific factors.

“(ii) The material containing a hazardous substance contributed by the potentially responsible party does not present toxic or other hazardous effects that are significantly greater than the toxic or other hazardous effects of other material containing hazardous substances at the facility.

“(C) REDUCTION IN SETTLEMENT  
AMOUNT BASED ON LIMITED ABILITY TO PAY.—

“(i) IN GENERAL.—The condition for settlement under this subparagraph is that the potentially responsible party is a natural person or a small business and demonstrates to the President an inability or a limited ability to pay response costs.

“(ii) CONSIDERATIONS.—In determining whether or not a demonstration is made under clause (i) by a small business,

1 the President shall take into consideration  
2 the ability of the small business to pay re-  
3 sponse costs and still maintain its basic  
4 business operations, including consider-  
5 ation of the overall financial condition of  
6 the small business and demonstrable con-  
7 straints on the ability of the small business  
8 to raise revenues.

9 “(iii) INFORMATION.—A small busi-  
10 ness requesting settlement under this sub-  
11 paragraph shall promptly provide the  
12 President with all relevant information  
13 needed to determine the ability of the  
14 small business to pay response costs.

15 “(iv) ALTERNATIVE PAYMENT METH-  
16 ODS.—If the President determines that a  
17 small business is unable to pay its total  
18 settlement amount at the time of settle-  
19 ment, the President shall consider such al-  
20 ternative payment methods as may be nec-  
21 essary or appropriate.

22 “(D) ADDITIONAL CONDITIONS FOR EXPE-  
23 DITED SETTLEMENTS.—

24 “(i) WAIVER OF CLAIMS.—The Presi-  
25 dent shall require, as a condition for settle-

1           ment under this paragraph, that a poten-  
2           tially responsible party waive all of the  
3           claims (including a claim for contribution  
4           under section 113) that the party may  
5           have against other potentially responsible  
6           parties for response costs incurred with re-  
7           spect to the facility, unless the President  
8           determines that requiring a waiver would  
9           be unjust.

10           “(ii) FAILURE TO COMPLY.—The  
11           President may decline to offer a settlement  
12           to a potentially responsible party under  
13           this paragraph if the President determines  
14           that the potentially responsible party has  
15           failed to comply with any request for ac-  
16           cess or information or an administrative  
17           subpoena issued by the President under  
18           this Act or has impeded or is impeding the  
19           performance of a response action with re-  
20           spect to the facility.

21           “(iii) RESPONSIBILITY TO PROVIDE  
22           INFORMATION AND ACCESS.—A potentially  
23           responsible party that enters into a settle-  
24           ment under this paragraph shall not be re-  
25           lieved of the responsibility to provide any

information or access requested in accordance with subsection (e)(3)(B) or section 104(e).”;

(C) in subparagraph (E) of paragraph (1) (as redesignated by subparagraph (A))—

(i) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respectively, and by moving such subclauses and the matter following subclause (III) (as so redesignated) 2 ems to the right;

(ii) by striking “(E) The potentially responsible party” and inserting the following:

“(E) OWNERS OF REAL PROPERTY.—

“(i) IN GENERAL.—The condition for settlement this subparagraph is that the potentially responsible party”; and

(iii) by striking “This subparagraph (B)” and inserting the following:

“(ii) APPLICABILITY.—Clause (i)”;

and

(D) by adding at the end the following:

“(F) BASIS OF DETERMINATION.—If the President determines that a potentially respon-

1           sible party is not eligible for settlement under  
 2           this paragraph, the President shall provide the  
 3           reasons for the determination in writing to any  
 4           potentially responsible party that requests a  
 5           settlement under this paragraph.

6           “(G) NO JUDICIAL REVIEW.—A determina-  
 7           tion by the President under this paragraph  
 8           shall not be subject to judicial review.

9           “(H) DEFINITION OF SMALL BUSINESS.—  
 10          In this paragraph, the term ‘small business’  
 11          means a business entity that, during its 3 tax-  
 12          able years preceding the date on which the busi-  
 13          ness entity first receives or received written no-  
 14          tification from the President of its potential li-  
 15          ability under section 107, employed on average  
 16          not more than 100 full-time individuals (not-  
 17          withstanding fluctuations resulting from sea-  
 18          sonal employment) or the equivalent thereof.”.

19          (2) SETTLEMENT OFFERS.—Such section  
 20          122(g) is further amended—

21                 (A) by redesignating paragraph (6) as  
 22                 paragraph (9); and

23                 (B) by inserting after paragraph (5) the  
 24                 following:

25                 “(6) SETTLEMENT OFFERS.—

1           “(A) NOTIFICATION AND OFFER.—As soon  
2 as practicable after receipt of sufficient infor-  
3 mation to make a determination, the President  
4 shall—

5           “(i) notify any person that the Presi-  
6 dent determines is eligible under para-  
7 graph (1) of the person’s eligibility for an  
8 expedited settlement; and

9           “(ii) submit a written settlement offer  
10 to such person.

11           “(B) INFORMATION.—At the time at which  
12 the President submits an offer under this sub-  
13 section, the President shall make available, at  
14 the request of the recipient of the offer, to the  
15 recipient any information available under sec-  
16 tion 552 of title 5, United States Code, on  
17 which the President bases the settlement offer,  
18 and if the settlement offer is based in whole or  
19 in part on information not available under that  
20 section, so inform the recipient.

21           “(7) LITIGATION MORATORIUM.—

22           “(A) IN GENERAL.—No person that has  
23 received notification from the President under  
24 paragraph (6) that the person is eligible for an  
25 expedited settlement with respect to a facility

1 under paragraph (1) shall be named as a de-  
2 fendant in any action under this Act for recov-  
3 ery of response costs (including an action for  
4 contribution) with respect to the facility during  
5 the period—

6 “(i) beginning on the date on which  
7 the person receives from the President  
8 written notice of the person’s potential li-  
9 ability and notice that the person is a  
10 party that may qualify for an expedited  
11 settlement with respect to the facility; and

12 “(ii) ending on the earlier of—

13 “(I) the date that is 90 days  
14 after the date on which the President  
15 tenders a written settlement offer to  
16 the person with respect to the facility;  
17 or

18 “(II) the date that is 1 year after  
19 receipt of notice from the President  
20 that the person may qualify for an ex-  
21 pedited settlement with respect to the  
22 facility.

23 “(B) SUSPENSION OF PERIOD OF LIMITA-  
24 TION.—The period of limitation under section  
25 113(g) applicable to a claim against a person

1           described in subparagraph (A) for response  
2           costs, natural resource damages, or contribution  
3           shall be suspended during the period described  
4           in subparagraph (A).

5           “(8) NOTICE OF SETTLEMENT.—After a settle-  
6           ment under this subsection becomes final with re-  
7           spect to a facility, the President shall promptly no-  
8           tify potentially responsible parties at the facility that  
9           have not resolved their liability to the United States  
10          of the settlement.”.

○